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FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899. NO. 233.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

THE UNITED STATES ET AL.

MOTION TO DISMISS OR AFFIRM BY APPELLEES F. GORDON DEXTER AND OLIVER AMES, SECOND.

Come now the appellees herein, F. Gordon Dexter and Oliver Ames, by Winslow S. Pierce, their counsel, appearing in that behalf, and move the Court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because:

FIRST. The order of the Circuit Court of the United States for the District of Nebraska, from which the said appeal is taken, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress, approved March 3d, 1891, entitled, "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason, the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States for the District of

Nebraska to grant or deny the application of the appellants for leave to intervene in the pending causes, and that Court in denying such application exercised its discretionary powers, and its action could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this court.

THIRD. The appellants never became parties to the suits in which intervention was sought and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3d, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence:

FIFTH. The order of the Circuit Court of the United States for the District of Nebraska, being non-appealable, and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

And the said appellees, by counsel as aforesaid, also move the court to affirm the said judgment or decree from which said appeal purports to have been taken, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only.

WINSLOW S. PIERCE.

Counsel for appellees F. Gordon Dexter and Oliver Ames, Second, Trustees, for the purpose of this motion.

No. 233.

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OCTOBER TERM, 1899. No. 233.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

THE UNITED STATES,
Appellees.

TO MESSRS. JOHN C. COOMBS, ESQ., AND HENRY J. TAYLOR, ESQ., COUNSEL FOR APPELLANTS ABOVE NAMED:

Please take notice that on the 12th day of February, 1900, at the opening of the Court, or as soon thereafter as counsel can be heard, the motions, of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

WILLIAM R. KELLY,
Counsel for appellees S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers, and The Union Pacific Railway Company.

No. 233.

Office Supreme Court U.
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Supreme Court of the United States.

OCTOBER TERM, 1899, No. 233.

The CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY, appellants,

vs.

The UNITED STATES ET. AL.

MOTION TO DISMISS OR AFFIRM BY APPELLEES THE UNION PACIFIC RAILWAY COMPANY AND S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT AND JOHN W. DOANE, RECEIVERS.

Come now the appellees herein, The Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink E. Ellery Anderson, Frederic R. Coudert and John W. Doane, receivers, by W. R. Kelly, their counsel, appearing in that behalf, and move the court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because :

FIRST. The order of the Circuit Court of the United States for the District of Nebraska, from which the said appeal is taken, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress approved March 3rd, 1891, entitled : "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason, the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States for the District of

Nebraska to grant or deny the application of the appellants for leave to intervene in the pending causes, and that Court in denying such application exercised its discretionery powers and its action could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this Court.

THIRD. The appellants never became parties to the suits in which intervention was sought and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3d, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence :

FIFTH. The order of the Circuit Court of the United States for the District of Nebraska, being non-appealable and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

And the appellees, by counsel as aforesaid, also move the court to affirm the said judgment or decree from which said appeal purports to have been taken, because although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only.

WILLIAM R. KELLY,

Counsel for appellees The Union Pacific Railway Company, and S. H. H. Clark *et al.*, Receivers, for the purpose of this motion.

No. 234.

FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899, NO. 234.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*,
Appellees.

TO MESSRS. JOHN C. COOMBS, ESQ., and HENRY J. TAYLOR, ESQ., Counsel for appellants above named:

Please take notice, that on the 26th day of February, 1900, at the opening of the Court, or as soon thereafter as counsel can be heard, the motions, of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

WILLIAM R. KELLY

Counsel for Appellees, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers, and the Union Pacific Railway Company.

No. 234.

Office Supreme Court U. S.
FILED
JAN 27 1900
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Supreme Court of the United States.

OCTOBER TERM, 1899. NO. 234.

THE CREDITS COMMUTATION COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

F. GORDON DEXTER and OLIVER AMES, SECOND, ET AL.

MOTION TO DISMISS OR AFFIRM BY APPELLEES THE UNION PACIFIC RAILWAY COMPANY AND S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT AND JOHN W. DOANE, RECEIVERS.

Now come the appellees herein, The Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, by W. R. Kelly, their counsel, appearing in that behalf, and move the court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because:

FIRST. The order of the Circuit Court of the United States for the District of Nebraska, from which the said appeal is taken, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress approved March 3rd, 1891, entitled: "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason, the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States for the District of

Nebraska to grant or deny the application of the appellants for leave to intervene in the pending causes, and that court in denying such application exercised its discretionery powers and its action could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this court.

THIRD. The appellants never became parties to the suits in which intervention was sought and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3rd, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence:

FIFTH. The order of the Circuit Court of the United States for the District of Nebraska, being non-appealable and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

And the said appellees, by counsel as aforesaid, also move the court to affirm the said judgment or decree from which said appeal purports to have been taken, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only.

WILLIAM R. KELLY,

Counsel for appellees The Union Pacific Railway Company and S. H. H. Clark *et al.*, Receivers, for the purpose of this motion.

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No. 234.

SUPREME COURT U.S.
FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899, NO. 234.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY,
Appellants,
vs.
F. GORDON DEXTER and OLIVER AMES, Second, Trustees, *et al.*,
Appellees.

To JOHN C. COOMBS, ESQ., and HENRY J. TAYLOR, ESQ., Counsel for Appellants above named:

Please take notice, that on the 26th day of February, 1900, at the opening of the Court, or as soon thereafter as counsel can be heard, the motions, of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon. Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

WINSLOW S. PIERCE.
Counsel for appellees F. Gordon Dexter and Oliver Ames, Second, Trustees for the purposes of these motions.

No. 234.

Supreme Court U. S.
FILED
FEB 24 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 234.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*,
Appellees.

To JOHN C. COOMBS, ESQ., AND HENRY J. TAYLOR, ESQ.,
COUNSEL FOR APPELLANTS ABOVE NAMED:

Please take notice that on the 26th day of February, 1900, at the opening of the Court, or as soon thereafter as counsel can be heard, the motions, of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

John W. Griggs.

Attorney-General.

John C. Cowin.

Special Counsel for the United States,
Appellee.

No. 234. C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

FEB 24 1900

JAMES H. McKENNEY, Clerk

Motion Papers for U. S.

Filed Feb. 24, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 234.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY,
Appellants,

vs.

F. GORDON DEXTER and OLIVER AMES, SECOND, TRUSTEES *et al.*,
Appellees.

Motion to Dismiss or Affirm by Appellee The United States of America.

Now comes The United States of America, appellee herein, by John W. Griggs, Attorney-General, and by John C. Cowin, Special Counsel, appearing for the purpose of making this motion, and moves the Court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because:

FIRST. The order of the Circuit Court of the United States, for the District of Nebraska, from which the said appeal was taken to the Circuit Court of Appeals, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the

Act of Congress, approved March 3, 1891, entitled: "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and, hence, said Circuit Court of Appeals had no jurisdiction of the appeal as taken to it, and the Supreme Court has no jurisdiction of the present appeal.

SECOND. The application of the appellants for leave to intervene in the pending cause was addressed to the judicial discretion of the Circuit Court of the United States, for the District of Nebraska, and the discretionary powers exercised by said Court in its action in denying such application could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this Court.

THIRD. The application to intervene and the appeal from the order denying said application are attempted proceedings and litigation on the part of the appellants against the United States of America, which has never consented that such proceedings be brought against it, but has objected, and still does object, to the same.

And, by way of supplemental statement of facts which have occurred in the Circuit Court in the cause in which the above-entitled appeal was taken, since said appeal, and for the information of this Court, it is now further respectfully represented and shown:

That in said cause in which said appeal was taken from the order of the Circuit Court of the United States for the District of Nebraska, denying to petitioners leave to intervene, which said cause was brought to foreclose the First Mortgage of The Union Pacific Railroad Company and to sell the railroad and telegraph property covered thereby, a final decree of foreclosure and sale was made and entered in the month of July, 1897 after said appeal

was taken from said order, and that, under and in pursuance of said final decree, a sale of all the railroad and telegraph lines of The Union Pacific Railway Company covered by said mortgage was duly and legally made on November 2, 1897, and which said sale was thereupon duly reported by the Special Master directed in said decree to make the same, and was in all respects confirmed by the said Court, and thereupon said decree and sale were duly and fully executed and consummated by the execution and delivery by said Special Master to the purchasers, as provided in said decree, of a good and sufficient conveyance of all of said property, said purchase price having been paid and having been applied as in said decree provided.

That neither said final decree nor said decree of confirmation of sale have been appealed from, reversed or in any way modified, nor have any steps been taken toward any such appeal, reversal or modification, and said decrees remain in full force and effect, and the time for appeal therefrom has long since elapsed.

That the subject matter of said foreclosure cause having long since passed out of the hands of the Circuit Court, it is manifest that the attempted prosecution of said appeal is futile and can have no result, even if jurisdiction to entertain the same existed and if said appeal could in any event be sustained.

The United States, appellee, in support of this its supplemental statement and further motion, files herewith, as part hereof, a certified copy of the final order and decree entered in said cause ratifying, approving and confirming said sale, marked "Exhibit A" and endorsed with the number and title of this case, and which it is asked may be taken as part hereof as fully as if the same were here fully recited instead of being referred to as an exhibit.

Wherefore the United States of America, appellee, represents the foregoing considerations as further grounds of this its motion.

And the said appellee the United States of America further, and in the alternative, moves the Court to affirm the ruling, order and decree of the Circuit Court of Appeals dismissing the appellant's appeal to said last-mentioned Court, for the reason that, if it should be held that this Court has jurisdiction yet, said appeal to this Court was obviously taken for purposes of delay and should be dismissed.

John W. Griggs.

Attorney-General.

John C. Cowin.

Special Counsel for the United States,
Appellee.

No. 234.

Office Supreme Court U. S.
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Supreme Court of the United States.

OCTOBER TERM, 1899.—No. 234.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

F. GORDON DEXTER and OLIVER AMES, SECOND, ET AL.

MOTION TO DISMISS OR AFFIRM BY APPELLEES F. GORDON DEXTER AND OLIVER AMES, SECOND.

Come now the appellees herein F. Gordon Dexter and Oliver Ames by Winslow S. Pierce, their counsel, appearing in that behalf, and move the court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because:

FIRST. The order of the Circuit Court of the United States, for the District of Nebraska, from which the said appeal is taken, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress approved March 3rd, 1891, entitled, "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason, the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States, for the District of

Nebraska, to grant or deny the application of the appellants for leave to intervene in the pending causes, and that court in denying such application exercised its discretionery powers and its action could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this court.

THIRD. The appellants never became parties to the suits in which intervention was sought and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3rd, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence :

FIFTH. The order of the Circuit Court of the United States, for the District of Nebraska, being non-appealable and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

And the said appellees, by counsel as aforesaid, also move the court to affirm the said judgment or decree from which said appeal purports to have been taken, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only.

WINSLOW S. PIERCE.

Counsel for appellees F. Gordon Dexter and Oliver Ames, Second, Trustees, for the purpose of this motion.

No. 235.

FILED
JAN 27 1900
JAMES H. McKENNEY

Supreme Court of the United States.

OCTOBER TERM, 1899. NO. 235.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY,

Appellants,

vs.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors of the Last Will and Testament of Frederick L. Ames, deceased,

Appellees.

TO MESSRS. JOHN C. COOMBS, ESQ., AND HENRY J. TAYLOR, ESQ., COUNSEL FOR APPELLANTS ABOVE NAMED:

Please take notice that on the 26th day of February, 1900, at the opening of the court, or as soon thereafter as counsel can be heard, the motions of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

WILLIAM R. KELLY,

Counsel for Appellees S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers, and The Union Pacific Railway Company.

235.

Office Supreme Court
JAN 27 1900
JAMES H. McKENNEY
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Supreme Court of the United States.

OCTOBER TERM, 1899. NO. 235.

The CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,

Appellants,

vs.

OLIVER AMES, SECOND, ET AL.,

MOTION TO DISMISS OR AFFIRM BY APPELLEES THE UNION PACIFIC RAILWAY COMPANY AND S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT AND JOHN W. DOANE, RECEIVERS.

Come now the appellees herein, The Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, by W. R. Kelly, their counsel, appearing in that behalf, and move the Court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because,

FIRST. The order of the Circuit Court of the United States for the District of Nebraska, from which the said appeal is taken, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress approved March 3d, 1891, entitled "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason, the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States for the District of Nebraska to grant or deny the application of the appellants for leave to intervene in the pending causes, and that Court, in denying such application, exercised its discretionary powers, and its action could not be reviewed by the Circuit Court of Appeals, and will not be reviewed by this court.

THIRD. The appellants never became parties to the suits in which intervention was sought, and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene, and the order denying such petitions, do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3d, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence,

FIFTH. The order of the Circuit Court of the United States for the District of Nebraska, being non-appealable and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

And the said appellees, by counsel as aforesaid, also move the court to affirm the said judgment or decree from which said appeal purports to have been taken, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only.

WILLIAM R. KELLY,

Counsel for appellees The Union Pacific Ry. Co. and S. H. H. Clark *et al.*, Receivers, for the purpose of this motion.